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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1946

## No. 270

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP AND STATE OF WISCONSIN, PETITIONERS,

*vs.*

E. E. McCARTIN AND CONTINENTAL CASUALTY COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

PETITION FOR CERTIORARI FILED JULY 3, 1946.

CERTIORARI GRANTED OCTOBER 14, 1946.

# STATE OF WISCONSIN

# IN SUPREME COURT

August Term, 1945 No. 149

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation,
*Plaintiffs and Respondents,*

*v.*

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, and STATE OF WISCONSIN,
*Defendants and Appellants.*

# APPELLANTS' APPENDIX

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# APPELLANTS' APPENDIX

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232-236 DIRECTIONS FOR JUDGMENT (omitting formal parts)

232 The question presented in this action of review is whether or not, under the full faith and credit clause of the Federal Constitution, (Sec. 1 of Article 4) did proceedings for compensation which resulted in a final award in the State of Illinois (where the employment contract was made and where both employer and employe were residents) bar recovery under the Compensation Act of Wisconsin (where the injury occurred).

The Industrial Commission answered the question "no," and proceeded to enter an interlocutory award. The plaintiffs contend that the commission was without jurisdiction to do so in view of the decision in the case of Magnolia Petroleum Co. v. Hunt, 320 U. S. p. 420; 150 A. L. R. p. 413.

The facts are not in dispute. A recitation of the jurisdictional facts in sequence will be helpful to determine whether they are similar and conform to the facts in the Magnolia case. Both E. E. McCartin, employer, and Leo Thomas Kopp, employe, were residents of the State of Illinois. Kopp had worked for McCartin for several years prior to May, 1943. Pursuant to the contract made in Illinois, Kopp agreed to work for McCartin on a building job at Beloit, Wisconsin. The job lasted about ten months, during which time Kopp drove

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back and forth between his home in Rockford, Illinois, to his job in Beloit, Wisconsin. On May 5, 1943, while so employed, Kopp suffered an injury to his left eye which resulted in a traumatic cataract.

On June 17, 1943, Kopp filed an application, dated June 4, 1943, for an adjustment of claim with the Wisconsin Industrial Commission. On June 17, 1943, McCartin, and his insurance carrier Continental Casualty Insurance Company, filed an answer with the Wisconsin Industrial Commission objecting to the jurisdiction of Wisconsin to hear the claim. On July 20, 1943, Kopp filed an application for adjustment of claim with the Illinois Industrial Commission in which the general nature of the dispute was given as "whether Illinois or Wisconsin has jurisdiction in my case."

Under date of October 11, 1943, the Industrial Commission of Wisconsin wrote the Continental Casualty Company, a copy of which was mailed to Kopp, which read in part as follows:

> ". . . We have informed him (Kopp) that under the Supreme Court holdings in Wisconsin, he is entitled to proceed under the Illinois Act and thereafter claim compensation under the Wisconsin Act with credit to be given for the amount paid to him under the provisions of the Illinois Act, regardless of whether or not he may later make claim under the Wisconsin Act. * * *"

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233 On November 4, 1943, a settlement contract was filed with the Illinois Commission in which it was expressly stated: "This settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin." On November 29, 1943, Kopp filed with the Illinois Commission a petition for a lump sum payment. On December 3, 1943, a hearing was had on said application and it was approved and an order was entered on January 10, 1944. No petition to review the settlement contract or lump sum payment was made and no action to review these orders was ever commenced. Full payment of the amount so ordered has been made.

On December 20, 1943, the Supreme Court rendered its decision in the Magnolia case. The Wisconsin commission proceeded with Kopp's application and a hearing was had on February 20, 1944. On April 18, 1944, the examiner entered an interlocutory award, which findings and order were affirmed by the commission under date of May 15, 1944. At this hearing it was admitted by the plaintiffs that at the time Kopp was injured McCartin was an employer subject to the provisions of the Wisconsin Act and that Kopp sustained personal injury proximately caused by the accident. However, the plaintiffs contended there and now here contend that under the doctrine of the Magnolia case, supra, the commission was without jurisdiction to entertain the application and make an

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award; that the award being final in the State of Illinois, it was a bar to further recovery for the same injury under the Compensation Act of Wisconsin.

Before the Magnolia case, our court followed the rule that an "award already had under the Workmens' Compensation Act of another state will not bar a proceeding under an applicable act, but the amount paid on the prior award in another state will be credited on the second award." Interstate Pr. Co. v. Indus. Comm. 203 Wis. 466; Salvation Army v. Indus. Comm. 219 Wis. 343; and Wisconsin Bridge and Iron Co. v. Indus. Comm. 222 Wis. 194.

In conformity with these decisions, the commission was correct in its letter of October 11, 1943, when it advised the parties that Kopp was entitled to proceed under the Illinois Act and thereafter claim compensation under the Wisconsin Act, with credit to be given for the amount paid under the provisions of the Illinois Act. There is no question that it was this information that prompted Kopp to have inserted in the compromise settlement filed with the Illinois Commission the reservation, "This settlement does not affect any rights that applicant may have under the Workmens' Compensation Act of the State of Wisconsin."

The defendants contend that the Magnolia case must be given a restricted application because it was decided by a five to four decision, wherein the

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majority of the court did not believe the opinion correct, and as pointed out above, that it was contra to the established law in Wisconsin. However, the Supreme Court, on January 17, 1944, denied a petition for rehearing in this case so that the rule therein declared became definitely established. The decisions of the Supreme Court, whether by a divided court or not, become the supreme law of the land on all matters involving a federal question. State courts must conform to such decisions. In the Magnolia case, it was admitted that there may be exceptional cases where the rule would not apply, but they made it definite that the Supreme Court of the United States is the final arbiter of the extent of those exceptions. Magnolia Petroleum Co. v. Hunt, 150 A. L. R. p. 413 on p. 418.

234 This court is unable to discover that the instant case falls within any of the exceptions stated in the Magnolia case. The facts in the instant case are more favorable to the reasoning and rule than they were in the Magnolia case itself. In fact, the evidence in the Magnolia case disclosed that there was a near fraud perpetrated on Hunt and that the Industrial Accident Board of Texas acted in excess of its powers when it made the award. See first paragraph of dissenting opinion of Justice Black, Magnolia Petroleum Co. v. Hunt, 150 A. L. R. 413, p. 425. It appears in this evidence that after signing application forms while in a hospital

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and on which insurance carrier made payments, Hunt returned to his home state of Louisiana where he found that his interests would be more fully protected than in Texas and he notified the insurance carrier of his intention to claim there. The insurance carrier stopped payments and apparently pressed the claim before the Texas commission. Four days later, without any request from Hunt, the Board notified him at his Louisiana home that a hearing would be held in Texas within two and a half weeks. Hunt did not appear and participate in these proceedings and the award was made. Hunt declined to receive payments on this award and pressed his claim in Louisiana which made an award for a larger sum, but credited the payments he had received from the Texas insurer.

In the instant case, although Kopp filed first in Wisconsin, he then filed in Illinois, the state of his residence. He was in no way misled as to his rights. He could choose which state in which to adjudicate his claim. He waited and elected to press his claim in his home state. It is recognized that the home state may have a superior interest in providing compensation for an injured employe than a foreign state where the injury occurred while temporarily employed. This argument, although it was considered in the dissenting opinion of Justice Black, was brushed aside in the majority decision. See Magnolia case, 150 A. L. R. pp.

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419 and 420. The only purpose in now mentioning it is to show that the merits are much stronger in the instant case.

The crux of the decision in the Magnolia case hinges on the following language:

> "The grounds of recovery are the same in one state as in the other, the injury to the employe in the course of his employment. The whole tendency of our decisions under the full faith and credit clause is to require a plaintiff to try his whole cause of action and his whole case at one time. He cannot split up his claim and 'a fortiori, he cannot divide the grounds of his recovery.' " Magnolia Petroleum Co. v. Hunt, 150 A. L. R. 413, p. 422.

This language is almost identical with that of our court in cases which arise solely within the state. State ex rel Watter v. Indus. Comm. 233 Wis. 48.

Continuing, the Supreme Court, on page 422 in the Magnolia case, stated:

> "Respondent was free to pursue his remedy in either state but, having chosen to seek it in Texas, where the award was res judicata, the full faith and credit clause precludes him from again seeking a remedy in Louisiana upon the same grounds." * * *
>
> "But as we decided in the Schendel Case it is a very different matter to say that recovery can be had in every state which affords a remedy."

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235 The commission pinned its reason for assuming jurisdiction and making an award on the ground that the Magnolia case is inapplicable because rights under the Wisconsin Act were expressly reserved in the Illinois proceedings by virtue of the settlement contract. The settlement contract, however, had no standing or legal effect until it was approved by the Illinois commission. It is the award and not the contract that is res judicata. The Illinois commission gave no weight to the reservation clause in the settlement contract when it ordered a lump sum payment on an award previously made. There is no evidence that the Illinois commission made a smaller award because of the reservation. The matter was carefully considered at that hearing. As if the Illinois commission had a premonition of the coming of the decision in the Magnolia Case, the following testimony took place before Commissioner William John Granata on December 3, 1943, when the petition was heard for the payment of a lump sum:

"The Commissioner: You are intelligent. I will approve the Lump Sum Settlement Petition if you want it but I just want you to understand it is a full settlement and it is final, you cannot make claim—

A I have thought that over—

Q In the future as against E. E. McCartin under the provisions of the Compensation Act for the injuries you sustained on May 5, 1943, for that injury to the left eye. In other words this com-

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pletely closes out your case so far as any medical, surgical or hospital expense, or as far as any additional compensation is concerned, you understand that?

A Well, does that—I do not know whether you know this. When this injury happened to me it was reported in Wisconsin.

The Commissioner: If you are concerned about the Workmens Compensation Act in Wisconsin they have a provision in there this Settlement does not affect any rights the Applicant may have under the Compensation Act of the State of Wisconsin. I do not know what it might mean, what your rights are in the State of Wisconsin — I do not know whether the Wisconsin Act provides for any increase where it has been already closed out in another state, I do not know but that provision is in there. What it is worth I am in no position to advise you. I sit only as a member of the Industrial Commission of the State of Illinois. I do not know what the Wisconsin Act is. I do not know what rights you have under the Wisconsin Act, if any. I cant say you will be protected there, I do not know.

Do you understand this thoroughly? Is there anything you do not understand you think I could advise you on?

A I have been through this matter for the last six months. I have thought it over thoroughly. I would very much appreciate it if you would give me a lump sum. I will take chances on Wisconsin." See transcript of Testimony, Respondent's Exhibit 9, pages 11 and 12.

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As stated before, this reservation was no doubt prompted by the letter of the Industrial Commission of October 11, 1943. That letter did state correctly the law as applied in Wisconsin previous to the Magnolia case. The Illinois Commission did not heed or consider that reservation, but made the final award upon the merits and as requested by Kopp as appears from the testimony above quoted. This award was paid. When that had been done, the full faith and credit clause of the United States stepped in and cut off any rights to a second award in Wisconsin. That is the effect of the holding in the Magnolia case. There is no doubt a moral obligation on the part of the com-
236 mission to grant a second award because of the advice given. However, when that right is challenged in court, it must yield to the supreme law of the land. The court is satisfied that this case is controlled by the rule in the Magnolia case.

Whether or not the State of Wisconsin has an interest by virtue of Sec. 102.59 of the statutes is not before the court. The commission made no order but only reserved jurisdiction to do so. Therefore, the findings, order and award of the commission under date of May 15, 1944, should be set aside and Kopp's application should be dismissed.

Plaintiffs' attorneys may draw the proper Findings and Judgment in accordance with this

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opinion, submitting the same to the Attorney General before it is presented to this court for signature.

Dated November 7, 1945.

2-5 COMPLAINT (only pertinent portions are printed)

* * *

4 8. That plaintiffs are aggrieved by reason thereof and bring this action for a review of said findings, order and award upon the following grounds:

(a) That defendant, Industrial Commission of Wisconsin acted without and in excess of its powers in making the finding "that applicant was an employe subject to the provisions of the Workmen's Compensation Act of Wisconsin" in that such finding is not supported by the evidence and is contrary to law.

(b) That defendant, Industrial Commission of Wisconsin acted without and in excess of its powers in making the finding "that the injury comes within the jurisdiction of the Wisconsin Act" in that such finding is not supported by the evidence and is contrary to law.

(c) That defendant, Industrial Commission of Wisconsin acted without and in excess of its powers in making the finding "that an award under that act (the Wisconsin Act) is not barred by the

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proceedings in Illinois" in that such finding is not supported by the evidence and is contrary to law.

(d) That defendant, Industrial Commission of Wisconsin had no jurisdiction and entered said order and award illegally and without right because the employer and employee involved were residents of the State of Illinois where their contract of employment was entered into and were subject exclusively to the Illinois Workmen's Compensation Act and the Illinois Industrial Commission had exclusive jurisdiction and because, prior to the date of said order and award defendant, Leo Thomas Kopp, elected to accept the benefits provided by the Illinois Act and that in making said order and award without jurisdiction defendant, Industrial Commission of Wisconsin, acted without and in excess of its powers.

(e) That the settlement contract entered into between plaintiff, E. E. McCartin, and defendant, Leo Thomas Kopp, in the State of Illinois was duly approved by the Illinois Industrial Commission and thereby became, was and had the same force and legal effect as an award and was and is final and conclusive and res adjudicata and both said approved settlement contract and the lump sum payment order referred to in paragraph No. 4 hereof bar further recovery for said injury in the State of Illinois, and that defendant, Industrial Commission of Wisconsin, was and is required by Article IV, Section 1 of the United States Consti-

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tution to give full faith and credit to said award of the Industrial Commission of Illinois and acted without and in excess of its powers in failing so to do and in entering an award against plaintiffs.

* * *

7-8 SEPARATE ANSWER OF DEFENDANT, INDUSTRIAL COMMISSION OF WISCONSIN (only pertinent portions are printed)

7 * * *

2. Denies that it acted without or in excess of its powers in making the following finding:

"* * * that the applicant was an employe subject to the provisions of the workmen's compensation act of Wisconsin,"

and denies that said finding is not supported by the evidence or is contrary to law.

3. Denies that it acted without or in excess of its powers in making the following finding:

"* * * that the injury comes within the jurisdiction of the Wisconsin Act,"

and denies that said finding is not supported by the evidence or is contrary to law.

4. Denies that it acted without or in excess of its powers in making the following finding:

"* * * that an award under that act [the Wisconsin Act] is not barred by the proceedings in Illinois,"

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and denies that said finding is not supported by the evidence or is contrary to law.

5. Denies that it had no jurisdiction or that it entered its order or award illegally or without
8 right; denies that the employer and employee involved were subject exclusively to the Illinois workmen's compensation act or that the Illinois industrial commission had exclusive jurisdiction; denies that in entering its order or award it acted without or in excess of its powers.

6. Denies that the settlement contract referred to in paragraph numbered 8 (e) of the complaint herein was or had the same force and legal effect as an award, and denies that it was or is final and conclusive and res adjudicata; denies that Article IV, Section 1 of the United States Constitution required this defendant to give full faith and credit to the award of the Industrial Commission of Illinois, and denies that its order and award violated the provisions of Article IV, Section 1 of the United States Constitution.

* * *

11-12 SEPARATE ANSWER OF DEFENDANT, STATE OF WISCONSIN (essentially the same as separate answer of industrial commission)

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18 APPLICATION FOR ADJUSTMENT OF CLAIM (only pertinent portions are printed)

STATE OF WISCONSIN
Industrial Commission of Wisconsin

APPLICATION FOR ADJUSTMENT OF CLAIM
Workmen's Compensation Act

Leo Thomas Kopp Case No. 79933-1 Employe.

vs.

E. E. McCartin Employer.

Continental Casualty Company Insurance Carrier.

(Name will be furnished by the Industrial Commission on request)

The petition of the applicant respectfully shows:

1. Address of Employe
Martin Ave. Route 1, Rockford, Illinois
2. Address of Employer
973 No. Main St. Rockford, Illinois
3. Accident occurred at
Beloit, Wisconsin on the 5th day of May
(City or Town)
1943, and was caused as follows: Was using hammer and chisel on masonery work on foundation for house and piece of steel either from hammer or chisel bounded upward and lodged near optic nerve. Permanent injury to or possible total loss of sight in left eye.

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8. Disability for which compensation is claimed 18 days temporary disability but permanent disability is claimed.

(State how long disabled and whether there is any permanent disability. If the injury resulted in death give the date of death)

* * *

12. Compensation paid injured $ None

13. What dispute has arisen as to liability? Only dispute as to amount, and jurisdiction between Wisconsin and Illinois.

14. Where should hearing be scheduled Beloit, Wisconsin

* * *

Wherefore the applicant prays that the respondent be required to answer the charges herein and that an order or award be made by the Industrial Commission granting such relief as the applicant may be entitled to in the premises.

Dated at Beloit, Wisconsin, this 4th day of June, 1943

Signed Leo Thomas Kopp

(Applicant must sign here)

* * *

RECEIVED
Jun 7 - 1943
*INDUSTRIAL COMMISSION*

21-23 ADMISSION OF SERVICE AND AMENDED ANSWER TO APPLICATION (only pertinent portions are printed)

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21

## AMENDED ANSWER TO APPLICATION

File No. E 79933-1

Leo Thomas Kopp — Applicant

vs.

E. E. McCartin — Respondent

* * *

11. State exactly what matters are in dispute between you and the applicant, and your reason for denying liability as claimed. (If any statements are later found to be incorrect an amended answer may be filed)

As a special defense it is alleged:

1. That applicant and respondent are and at all times material to this case were residents of the State of Illinois.

2. That the contract of employment pursuant to which applicant was performing services when he was injured was entered into in the State of Illinois and was an Illinois contract and that applicant's employment in the State of Wisconsin was a temporary employment.

22

3. That at the time applicant was injured, the parties were subject to the Illinois Workmen's Compensation Act.

4. That on or about the 3rd day of November, 1943, applicant, Leo Thomas Kopp, and respondent, E. E. McCartin, entered into a settlement contract by the terms of which respondent offered and applicant accepted the sum of $2,112.00 in full

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and final settlement of any and all claims of every nature that applicant then had or might thereafter have on account of and arising out of the injury referred to in the application filed herein.

5. That the matter of the approval of said petition for settlement contract duly came on for hearing before the Industrial Commission of Illinois on the 3rd day of December, 1943, at which time applicant also filed a petition praying that the amount due him under the Illinois Workmen's Compensation Act be paid in a lump sum. That applicant was present in person at said hearing and that on the 3rd day of December, 1943, said settlement was approved by the Industrial Commission of Illinois and an order entered by said Industrial Commission providing that the compensation due applicant under the Illinois Workmen's Compensation Act be paid in a lump sum of $2,112.00, as prayed in said petition, in accordance with the provisions of Section 9 of the Illinois Workmen's Compensation Act.

6. That said sum of $2,112.00 has been paid to and accepted by applicant.

7. That the time for reviewing said approval of said settlement contract by either petition or by suit by certiorari has expired and that it is provided by Section 19 (h) of the Illinois Workmen's Compensation Act that when compensation which is payable in accordance with an award or settlement contract approved by the Industrial Com-

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mission is ordered paid in a lump sum by the Commission, no review shall be had.

8. That it is provided by Section 6 of the Illinois Workmen's Compensation Act that no common law or statutory right to recover damages for injury or death sustained by an employee while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of said act or anyone otherwise entitled to recover damages for such injury.

9. That it is the law of the State of Illinois as established by the statutes of said state and by the decisions of its highest courts:

(a) That a settlement contract which has been approved by the Illinois Industrial Commission is in legal effect an award and is final and conclusive and res judicata.

(b) That a lump sum order is final and conclusive and res judicata.

23 (c) That an award of compensation in another state bars an award in Illinois for the same injury.

10. That applicant's right to compensation for the injuries referred to in his application is confined to that permitted by the Illinois Workmen's Compensation Act and that he is not entitled to compensation under and has no rights under the Wisconsin Workmen's Compensation Act and the Industrial Commission of Wisconsin has no jurisdiction of this case.

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11. That under the full faith and credit clause, Art. IV, Sec. 1, of the Constitution of the United States, applicant's petition for compensation under the Wisconsin Workmen's Compensation Act is barred as res judicata by the payment under the Illinois Workmen's Compensation Act, by the approval of the settlement contract in Illinois and by the lump sum settlement order entered by the Illinois Industrial Commission.

E. E. McCARTIN AND
CONTINENTAL CASUALTY COMPANY

[signed] By Wilkie Toebaas Hart & Jackman
Their Attorneys

53-60 FINDINGS AND INTERLOCUTORY AWARD OF EXAMINER FLINT (dated April 18, 1944) (omitting formal parts)

53 This matter is pending before the Commission upon application by the employe for an order or award under the Workmen's Compensation Act of Wisconsin for an injury sustained by him in this state. Issue was joined by an amended answer denying jurisdiction under the Workmen's Compensation Act of Wisconsin as to the injury in question, and alleging that under the full faith and credit clause of the Federal Constitution proceedings under the Wisconsin Act are barred by a previous settlement made under the Workmen's Compensation Act of Illinois.

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Hearing was held at Beloit, Wis. on February 24, 1944.

APPEARANCES: Applicant in person; respondent and insurer by Wilkie, Toebaas, Hart & Jackman, appearing by Mr. Hart and by Mr. John H. Page, their attorneys.

The Attorney General also makes claim in the matter for contribution to the state fund under the provisions of Sec. 102.59 Wis. Stats., submitting said claim upon the testimony taken.

It is undisputed that the applicant sustained personal injury, proximately caused by accident, in the employ of respondent on May 5, 1943; that the accident causing the injury arose out of said 54 employment; that at the time of the injury the applicant was performing service growing out of and incidental to said employment; that the respondent was an employer subject to the provisions of the Workmen's Compensation Act of Wisconsin and was insured under said act by Continental Casualty Company; that at the time of the injury the applicant was 46 years of age; that his average weekly earnings were $64.00; that respondent had due notice of the injury on the day of its occurrence; that as a result of the injury the applicant was temporarily totally disabled from the date of the injury to May 24, 1943, exclusive; that as a further result he has sustained a trau-

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matic cataract of the left eye; that he has been provided by the respondent and insurer with certain treatment for the cure and relief of the injury; and that he has been paid no compensation under the provisions of the Wisconsin Act, but has been paid the sum of $2,139.66 under the terms of a settlement contract made under the provisions of the Illinois Act, covering both temporary disability, and total and permanent loss of sight of the left eye. No claim is made that the injury was intentionally self-inflicted. While no medical testimony was presented, it appears to be undisputed that the applicant, at the time of the hearing, had total impairment of his left eye for industrial use; that no removal of the cataract had been attempted; and that the ultimate impairment of vision, if such removal were attempted, is unknown.

Upon facts and for reasons stated in the accompanying memorandum the examiner finds and concludes that the applicant was an employe subject to the provisions of the workmen's compensation act of Wisconsin; that the injury comes within the jurisdiction of the Wisconsin Act; and that an award under that act is not barred by the proceedings in Illinois.

55 The testimony discloses a disbursement by the applicant of $15.00 for glasses to aid the vision of the fellow eye. Whether they were reasonably required by the injury is not disclosed by the present record, and jurisdiction is expressly reserved with

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reference to liability for this item. Under the Wisconsin Act, were the cataract successfully removed by operation, there would remain a minimum permanent disability of 62½% as compared with total impairment of the left eye for industrial use. An interlocutory award will be entered on this basis, reserving the questions of further treatment and of determination of further temporary, and of the exact extent of permanent, disability. The question of payment to the state fund must also be reserved until determination of the permanent impairment of vision.

It is computed that for the temporary disability heretofore sustained the applicant is entitled to indemnity at the rate of $21 per week of 2½ weeks, or in the sum of $52.50; that for said minimum permanent impairment he is entitled to indemnity at said rate for 156.25 weeks, or in the sum of $3,281.25; that the indemnity heretofore paid covers all indemnity accruing to April 15, 1945; and that there remains to accrue thereafter the sum of $1,194.09, normally payable at the rate of $91.00 per month, commencing with May 15, 1945.

NOW, THEREFORE, pending a final determination of the matter, this

## INTERLOCUTORY AWARD

That respondent, E. E. McCartin, and his insurer, Continental Casualty Company, shall on the

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15th day of May, 1945, and the 15th day of each month thereafter pay to the applicant, Leo Thomas Kopp, Ninety-One Dollars ($91.00) until the sum
56 of One Thousand One Hundred Ninety-Four and Nine One-Hundredths Dollars ($1,194.09) shall have been so paid, or until a different method of payment be provided.

* * *

57 MEMORANDUM

LEO THOMAS KOPP VS E. E. MCCARTIN

The applicant and respondent were both residents of Illinois when they entered into their contract of employment, and so remained to the time of the injury. The contract was made in Illinois. It contemplated, first a brief period of work in Illinois, to be followed by work in Wisconsin. The applicant had been engaged upon this work in Wisconsin for some ten months to the time of the injury, and the injury occurred in Wisconsin. It was caused by a flying particle of steel from his hammer or chisel penetrating the left eyeball.

On June 7, 1943 the applicant filed his application for relief under the workmen's compensation act of Wisconsin. The respondent and insurer denied liability on the ground that Illinois had exclusive jurisdiction in the matter; and on July 20, 1943 the applicant also filed application for adjust-

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ment with the Illinois Commission. It is noted that under the Illinois Act proceedings for compensation are barred unless claim for compensation is made within six months from the accident, and, if no compensation has been paid, unless application for compensation is filed with the Illinois Commission within one year, Sec. 24 (Exh. 7).

No compensation for disability having been paid under either Act, the Wisconsin Commission advised the parties that under Wisconsin law the applicant could proceed under the Illinois Act and thereafter proceed under the Wisconsin Act, it being contemplated that the benefits in Wisconsin would be higher, and that in case a Wisconsin award were so issued credit would be given upon it for any payments made under the Illinois Act. The Commission urged that the employe be not prejudiced by having to wait while the question of jurisdiction should be considered, when it seemed clear that he would be entitled, as a minimum, to the Illinois benefits. The insurer replied that with this assurance of credit for any payments it might make in Illinois, it was proceeding to pay compensation under the Illinois Act.

58

On November 29, 1943 the parties filed with the Illinois Commission a settlement contract evidencing settlement of all claims for the injury by virtue of the Workmen's Compensation Act of Illinois and containing the following clause: "This settlement does not affect any rights that applicant

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may have under the Workmen's Compensation Act of the State of Wisconsin." Petition for payment in a lump sum was filed the same day as the contract. Following hearing before the Illinois Commission on December 3, 1943, in the course of which attention was called to the reservation of rights in Wisconsin, the settlement contract and petition for payment in lump were endorsed approved, by a member of the Commission, on that date. Payment was made on December 7, 1943, in the amount of the settlement contract for permanent disability plus the compensation for temporary disability, a total of $2,139.66. Thereafter, on January 10, 1944, a formal order was entered by the Illinois Commission directing payment of the lump sum for permanent disability, without commutation to its present value. The circumstances of the entry of this later order, after payment was in fact made, are not disclosed.

In the meantime, on December 20, 1943, the Federal Supreme Court handed down its decision in the case of Magnolia Petroleum Company vs Hunt, holding that where a compensation claim had reached the point of final award in one state having jurisdiction of the injury, and the final award, under the law of that state, has the effect of a final judgment, it becomes res judicata as to compensation for the injury in question, and under the full faith and credit clause bars any later or further recovery under the compensation act of

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another state having jurisdiction of the injury. Thereafter, the amended answer was filed in this proceeding, setting up this bar.

59 The Magnolia case upsets the well-settled conception of the law heretofore applying in this state to rights of recovery of compensation for an injury sustained under circumstances resulting in the compensation acts of more than one state having jurisdiction. Doubtless the race will now be on, between some employers (and insurers) and their injured employes, with the employers having a running start because of their superior knowledge of the law and of which state, having jurisdiction, has the lower benefits for the injury in question. In fact, the average employe will probably not even get started before the race is over by the employer reaching the finish-line of a final award in the state of the lower benefits.

However, there was no such race in regard to this injury. The parties proceeded in Illinois with the mutual expectation of later proceedings in Wisconsin. Rights under the Wisconsin Act were expressly reserved in the Illinois settlement contract. That agreement is in legal effect an award. Hartford Accident & Indemnity Co., vs Ind. Comm, 320 Ill. 544 (Exh 10); Mickelson vs Ind. Comm., 375 Ill. 462 (Exh 10). No reason is perceived why the reservation of rights in Wisconsin should not be effective; and in the examiner's

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opinion it takes this case out from the rule in the Magnolia case.

While, in the examiner's opinion, the foregoing disposes of any bar of the full faith and credit clause, it appears questionable whether a mere award of the Illinois Commission has the effect of a final judgment and is res judicata. No express provision going that far is found in the Illinois enactments proved. While two of the cases included in Exh. 10 refer to awards as being res judicata (Stromberg Motor Device Co. vs Ind. Comm, 305 Ill. 619 and Centralia Coal Co. vs Ind. Comm., 297 Ill. 451), the holding of those cases is merely that
60 after expiration of specified times the Illinois Commission itself cannot set them aside and issue further awards. See Lange Canning Co. v Ind. Comm., 183 Wis. 583, 588; Hinrichs v. Ind. Comm., 225 Wis. 195, 197; Maryland Cas. Co. vs Ind. Comm., 230 Wis. 363, 369. Furthermore, the claim of the state fund was not, and could not be, considered in the proceedings in Illinois.

That the Wisconsin Act may have jurisdiction of the injury appears to rest upon the same facts as the jurisdiction of the Texas act in the Magnolia case. The length of time that the applicant was employed in Wisconsin, and differences in the provisions of both the Illinois and Wisconsin Acts from the provisions in the Vermont and New Hampshire acts or laws, distinguish this case from the situation presented in the case of Bradford

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Elec. Co. v. Clapper, Admx., 286 U. S. 145. The Wisconsin Act, under its own provisions, does apply to the parties and to the injury, and notwithstanding the fact of an award in another state. Interstate Power Co. v. Ind. Comm., 203 Wis. 466; Salvation Army v. Ind. Comm., 219 Wis. 343; Val Blatz Brewing Co. vs. Ind. Comm., 201 Wis. 474, 481; Wandersee v Ind. Comm., 198 Wis. 345, 347; and other cases. Any payment of compensation made under the act of another state is to be credited against the liability under the Wisconsin Act. Interstate Power Co. v Ind. Comm., supra, at p. 478; Wis. Bridge & Iron Co. v Ind. Comm., 222 Wis. 194, 198; Salvation Army v Ind. Comm., supra, at p. 348.

The applicant, being employed in Wisconsin, by an employer subject to our Act, was an employe subject to the Act as matter of law. He could not, and did not purport to, withdraw.

74-76 ORDER OF INDUSTRIAL COMMISSION (dated May 15, 1944) (omitting formal parts)

74 Petition for review in the above matter having been presented to the Industrial Commission alleging error in the findings and order of the examiner made on April 18, 1944; and the Industrial Commission having reviewed the entire record, and particularly the testimony upon which petitioner relies in support of his contention, and hav-

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ing reached its conclusion in respect to the matter set out in the petition:

NOW, THEREFORE, the Industrial Commission does

ORDER

That such findings and order be, and the same are hereby affirmed.

* * *

75 Re: E. E. McCartin v. Leo Thomas Kopp

MEMORANDUM

Applicant and respondent, residents of Illinois, entered into a contract of employment in Illinois contemplating a short period of work in Illinois followed by work in Wisconsin. Applicant had worked in Wisconsin for about 10 months when he was injured in this state.

On June 7, 1943, he filed application for benefits under the workmen's compensation act of Wisconsin. On July 20, 1943, he also filed application with the Illinois industrial commission,—this to protect him from the running of statutes of limitation. On November 29, 1943, the parties filed with the Illinois commission a settlement contract evidencing settlement of all claims for the injury by virtue of the workmen's compensation of Il-

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linois. The instrument contained the following clause: "This settlement does not affect any rights that applicant may have under the workmen's compensation act of the State of Wisconsin." Petition for payment in lump sum was filed, and on January 10, 1944, a formal order was entered by the Illinois commission directing payment in lump for permanent disability. Thereafter hearing was scheduled in Wisconsin, following which the commission's examiner held that the Wisconsin commission had not been divested of jurisdiction and awarded compensation for applicant's loss, with due credit for the amount which had been paid pursuant to the settlement contract made under the Illinois compensation act.

Respondent contends that the United States Supreme Court holding in the case of *Magnolia Petroleum Co. v. Hunt* precludes the Wisconsin commission from assuming jurisdiction. In the Magnolia Petroleum case the holding was that
76 where a compensation claim had reached the point of final award in one state having jurisdiction of the injury, and the final award under the law of that state has the effect of a final judgment, it becomes res judicata as to compensation for the injury in question, and that under the full faith and credit clause later recovery is barred under the compensation act of another state also having original jurisdiction of the injury.

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The examiner concluded that in view of the mutual expectation of later proceedings in Wisconsin as evidenced by the clause in the settlement contract made in Illinois, rights under the Wisconsin act were expressly reserved, and that the express agreement and understanding of the parties is to be given effect, thus taking the case out from the rule in the Magnolia case.

The commission agrees with its examiner. The Illinois award, which was made in conformance with the agreement of the parties, was not res judicata for the reason that the parties understood and agreed that applicant was not to be foreclosed by the subsequent Illinois award but was to have his right to proceed under the Wisconsin act for additional benefits. To contend that the clause in question had no effect because applicant, by settling under the Illinois act, closed out his entire claim, would be to overlook the clear and unequivocal intention and agreement of the parties.

The commission further agrees with the examiner that regardless of the agreement there is serious question as to whether a mere award of the Illinois commission has the effect of a final judgment and thus becomes res judicata.

The examiner has admirably outlined reasons for his conclusion, with all of which the commission finds itself in full agreement.

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112 ORIGINAL LETTER FROM MORTIMER LEVITAN, ASSISTANT ATTORNEY GENERAL, TO MR. A. T. FLINT, EXAMINER FOR INDUSTRIAL COMMISSION, DATED MARCH 9, 1944 (omitting formal parts)

Re: *Leo Thos. Kopp v. E. E. McCartin*
E 79933-1

This is to acknowledge your letter of February 29 in regard to the above case, together with a synopsis of the testimony taken.

This is to inform you that I am making a claim on behalf of the state fund under the provisions of sec. 102.59, Stats. The testimony already taken in this case may be considered as applying to the claim made on behalf of the State of Wisconsin.

I am sending a copy of this letter to Lawrence E. Hart, 111 South Hamilton Street, Madison, attorney for the respondents, so that he may be advised of this claim.

115-178 TESTIMONY

(Only testimony pertaining to the jurisdictional question has been abstracted.)

118 It was admitted that Leo Thomas Kopp apparently sustained personal injury on May 5, 1943, while in the employ of E. E. McCartin while performing services growing out of and incidental to

119 the employment, and that the injury was caused

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120 by accident; that Mr. McCartin was subject to the Wisconsin compensation act; that $2 139.66 compensation and $216.05 medical had been paid under the Illinois act. * * *

124 LEO THOMAS KOPP, called as a witness in his own behalf, testified:

EXAMINATION BY EXAMINER:

My name is Leo Thomas Kopp and I am the
125 applicant in this matter. My present mail address is Martin Avenue, Route Number One, Rockford, Illinois. I am the one who got hurt on May 5, 1943, while working for E. E. McCartin. I was born on December 25, 1896, and at the time of my injury was 46 years old. * * * My occupation in the employ of Mr. McCartin was called either
126 brick mason or bricklayer. I was repairing some work when I got hurt; we had to chisel mortar out of some of the joints in cement blocks and I struck the chisel with my hammer, and a piece of steel flew off the hammer, either the hammer or
127 chisel, and penetrated my left eye. * * * At the
128 time of the injury I was working at Beloit, Wisconsin, on the housing project, general mason work. I would say it was the northeast part of Beloit that I was working, I am not sure of the direction. I am positive that it was on the Wisconsin side. I had been working here in Wiscon-

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sin I think about ten months continuously before the injury, and always for Mr. McCartin and on
134 that same job. * * * I never filed any notice with
135 the Industrial Commission of Wisconsin that I did not wish to be subject to the Wisconsin compensa-
137 tion act. * * * I was a resident of Illinois at the
138 time of the injury and did my voting there. * * *

CROSS-EXAMINATION BY MR. HART:

I had worked for Mr. McCartin for some years prior to 1943. There were little periods of lay-offs in the winter especially, from maybe a week to a month or so. Those were lay-offs with the intention of going back on the job as work picked up again, it was just the slack period of the year. The original hiring or original contract of employment was entered into at Rockford, and all subsequent arrangements with reference to work that I was to do for him were made at Rockford, Illinois.
139 When I went on this job at Beloit, Wisconsin, he got in touch with me at Rockford and told me he had this job up in Wisconsin. I did some piece of work in Rockford and then came up here. So that the arrangements for the job at Beloit, Wisconsin, and the hiring was all done at Rockford, Illinois. I knew when he asked me to go to work how much I was going to receive; that's union scale, that's set. The union scale in Beloit is lower than the union scale in Rockford and he paid me the Rockford

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140 scale, * * * I filed an application for compensation under the Illinois Act. * * *

(The following exhibits are copied into the transcript of testimony:

140-143 Resp. Ex. 1—Application for adjustment of claim (Illinois);

143-146 Resp. Ex. 2—Settlement contract;

146-149 Resp. Ex. 3—Petition for lump sum;

149-150 Resp. Ex. 4—Receipt on account of partial compensation;

150-152 Resp. Ex. 5—Final report and settlement receipt.

The original exhibits are on record pages 179 to 186, inclusive, and are printed on pages 148-160, this appendix).

152 LEO THOMAS KOPP, recalled for further cross-examination, testified:

CROSS-EXAMINATION BY MR. HART:

* * *

The document that you are showing me that has been marked Resp. Ex. 1 is a copy of the application which I filed with the Illinois Industrial Commission. It is in my handwriting and bears my signature at the end. Later I entered into a settlement contract which was filed with the Illinois Industrial Commission. Resp. Ex. 2 which you are showing me is a copy of the settlement

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153 contract that I entered into, and that also bears my signature. Then I had a hearing before the Industrial Commission of Illinois at Chicago, and at that time I asked to have the compensation provided for in the settlement contract paid to me in a lump sum, and filed a petition for the purpose of obtaining payment in lump sum. Resp. Ex. 3. is a copy of the petition for lump sum that I filed with the Illinois Industrial Commission and that also bears my signature. It is a fact that the compensation provided for in the settlement contract has been paid to me. Resp. Ex. 4 which you are showing me is a receipt bearing my signature; that receipt, Resp. Ex. 4, is for $27.66 to cover only the period or the compensation due for temporary total disability. Resp. Ex. 5 which you are showing me is a receipt for compensation bearing my signature. That is for one and four-sevenths weeks for
154 temporary total disability in the amount of $27.66 and then for one hundred twenty weeks for 100 per cent loss of use of the left eye, $2,112, and shows payment of $216.05 for hospital and medical services. (Exs. 1 to 5, both inclusive, received.)

I don't think you would call it a hearing that I had before the Illinois Industrial Commission at Chicago, there was a final settlement there. There was a proceeding there at which I testified; I was asked some questions and made answers; that was held on December 3, 1943, at the office of the In-
155 dustrial Commission of Illinois in Chicago. * * *

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I want to know whether you remember being asked these questions and making these answers:

* * *

"THE COMMISSIONER: The reason I am asking you is this I have before me a Settle-
156 ment Contract and a Lump Sum Petition and ordinarily in these kind of cases we do not like to close them out. I want you to completely understand this.

A I have had quite a bit of time to think it over.

THE COMMISSIONER: I want you to completely understand what your rights are so that we can have the record clear, so we can feel safe in taking this action knowing that you understa id it. That is my duty.

A Here is my position now, even the work I am doing now I have to go out and get a job that is common work and it does not pay me half what I worked for before. My scale was $1.60, I work for 74 cents now. I find that is kind of dangerous for me.

THE COMMISSIONER: Unfortunately under the law, under the compensation Act an eye is an eye whether it happens to a skilled artisan or whether it happens to a common laborer and although it works injustices in many cases there is very little that we can do about it except to administer and interpret the Workmens Compensation Act.

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A The reason I want a lump sum settlement because finding it so difficult to do so much work, I have a little property in addition to this, I could sell that and buy a little acreage.

THE COMMISSIONER: You are intelligent. I will approve the Lump Sum Settlement Petition if you want it but I just want you to understand it is a full settlement and it is final, you cannot make claim—

A I have thought that over—

Q In the future as against E. E. McCartin under the provisions of the Compensation Act for the injuries you sustained on May 5, 1943, for that injury to the left eye. In other words
157 this completely closes out your case so far as any medical, surgical or hospital expense, or as far as any additional compensation is concerned, you understand that?

A Well, does that—I do not know whether you know this. When this injury happened to me it was reported in Wisconsin.

THE COMMISSIONER: If you are concerned about the Workmen's Compensation Act in Wisconsin they have a provision in there this Settlement does not affect any rights the Applicant may have under the Compensation Act of the State of Wisconsin.

* * *

I do not know what it might mean, what your rights are in the State of Wisconsin—I do not

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know whether the Wisconsin Act provides for any increase where it has been already closed out in another state. I do not know but that provision is in there. What it is worth I am in no position to advise you. I sit only as a member of the Industrial Commission of the State of Illinois. I do not know what the Wisconsin Act is. I do not know what rights you have under the Wisconsin Act, if any. I can't say you will be protected there, I do not know. Do you understand this thoroughly. Is there anything you do not understand you think I could advise you on?

A I have been through this matter for the last six months. I have thought it over thoroughly. I would very much appreciate it if you would give me a lump sum. I will take chances on Wisconsin.

THE COMMISSIONER: I will allow you a
158 lump sum since you understand it and you know what you are doing.

A I do.

Q Ordinarily we don't.

A I think I do anyhow. I have thought it over everyway."

BY MR. HART:

I remember being asked those questions and making those answers. My answers were true.

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* * * The Illinois Commission approved that settlement contract and approved payment of that $2,112 to me. They also entered an order approving the making of a lump sum payment to me. I didn't file any petition after that with the Illinois Industrial Commission asking them to review that action, nor did I commence any action in any court of Illinois in any form for the purpose of
159 reviewing either one of those orders. At the time I signed this receipt marked Exhibit 5 I was paid this $2,139.66, and that was the amount that the lump sum order that was entered at Illinois provided be paid to me. * * *

EXAMINATION BY THE EXAMINER:

When I said that arrangements were made in Rockford for work to be done in Beloit, I refer to the arrangements, well only this, that E. E. McCartin asked me if I wanted to go to work at Beloit. I said "yes," so I went to work there. Prior to going up here, he said, "I have got a little job I want done first at Rockford, Illinois." I done that first and from there I came up to Beloit and began work up here. I am not positive whether I was working for him at the time he asked me if I wanted to go to Beloit. There was a lay-off of I think
160 a week or two. I don't recall whether it was during that time he asked me; yes, I think it was. I was working for someone else when he asked me.

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I was working for another contractor. And he told me before coming to Beloit he wanted me to do a little fireplace job in Rockford, which I did, and from there I went right to Beloit. The fireplace job took I think about seven days possibly. I had been working for some contractor since I last worked for McCartin I should say about two months, but that's merely a guess. It may be a little more or less. But, of course, I had worked for McCartin before that. I worked for him in Rockford and that work was completed and he didn't have any more work for some time, so I took this other job and while I was working for this contractor he came and asked me if I would go up to Beloit. He says, "I have about ten months work or more up there," so the job I was on was nearing completion, so I took this job with him. There is never any discussion about what I would be paid, or other arrangements, it pays the union scale. I was not paid any expenses while I was in Beloit. No, I didn't have to pay my own living expenses, we drove back and forth. He promised to pay the transportation, but it turned out to be
161 a case where we had to ride with him and sometimes we had to wait morning and evening, so we drove ourselves and paid for it ourselves. We didn't take the meals up here. We drove back and forth mornings and nights, and took our lunch with us. Generally there were several of us that came up; sometimes three would drive in a car.

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Let's see, four or five of McCartin's men from Rockford were working on this job here in Beloit. There were others—some of them from Beloit and I believe some of them from Janesville. They were coming and going, and they were all working on McCartin's work. Some of them came from as far as Minnesota. Quite a few of them from Watertown, some of them; Janesville, Wisconsin; some from Watertown, Burlington, Wisconsin. I couldn't tell you where some of these men from Beloit, Janesville, Burlington, Watertown, Wisconsin, were hired for the job. I think they probably were all hired at Beloit, but I don't know. I was never present when any of them were hired. I probably was present, but I don't remember anything about it; didn't pay any attention to it. But
162 they were all working on that job here in Beloit on the Wisconsin side of the line. On this Exhibit 2, I referred before to this clause, which was referred to, I believe, by Mr. Hart in one of his questions, this settlement does not affect any rights that applicant may have under the workmen's compensation act of the State of Wisconsin. I signed this settlement contract and it bears my signature.

Q Can you tell us how that clause that I just read came to be in that contract?

* * *

A At my request Mr. Page inserted that in the contract.

(Question answered subject to the objection.)

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163. Mr. Page represented the respondent and insurer; he represented respondent and insurer before the Illinois Commission too. This job in Wisconsin took approximately ten months. At the time I was hurt it was finished within I would say about a month possibly. The work we was doing was finishing touches.

RECROSS-EXAMINATION BY MR. HART:

In response to questions by the Examiner I gave some testimony about the conversation I had with Mr. McCartin about coming to Beloit to work on this job and about taking that fireplace job in Rockford first. That conversation was all at Rockford, Illinois. And the fact is that I was hired in Rockford, Illinois, for the Wisconsin job. I was never hired in Wisconsin to work for Mr. McCartin on any job, it was always in Illinois. * * *

164 * * * (Resp. Ex. 6 received in evidence) * * *,

165 which exhibit is certified copies of application for adjustment of claim, settlement contract, petition for lump sum, receipt for partial compensation and final report and settlement receipt—Industrial Commission of Illinois (not printed); (see R. pp. 187-195). * * * (Resp. Exs. 7 and 8 received in evidence.) Resp. Ex. 7 is a pamphet prepared and published by the Secretary of State of the State of Illinois, containing the entire workmen's compensation act of that state (not printed); (see R. 196). Resp. Ex. 8 is certified copies of sees. 3, 4, 5, 6, 8, 9,

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10, 11, 13, 14, and 19 of the workmen's compensation act of the State of Illinois (not printed); (see R. 196). * * *

165-166 (Resp. Ex. 9 received in evidence.) Resp. Ex. 9 is a certified copy of transcript of testimony on December 3, 1943, at Chicago, Illinois. (The original exhibit is on record pages 197 to 210, inclusive, and is printed on pages 163-168, this appendix.)

167-168 (Resp. Ex. 10 received in evidence and copied into the transcript of testimony.) Resp. Ex. 10 is a list of Illinois cases, points and authorities (not printed); (see R. 211). * * *

* * *

170 LEO THOMAS KOPP, recalled for redirect examination, testified:

EXAMINATION BY THE EXAMINER:

Before I went ahead with this claim in Illinois I went up to Madison and saw someone in the office of the Industrial Commission of Wisconsin; I went up there when refused the $3500 offer that the Continental Casualty Company made. I went up there and talked with Mr. Nelson, in the Industrial Commission office of Wisconsin. Later I received a letter, dated October 11, 1943, from
171 Mr. Nelson. This is the copy of that letter in the

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commission's file and is a copy of the letter received (Appl. Ex. A). I don't recall that later, after further negotiations and seeing the representative of the insurance company in Illinois, I wrote to the Commission, to Mr. Nelson. Looking at a letter dated January 9, 1944, now marked Exhibit C, in the commission's file, I recognize that as mine; it is in my handwriting. I wrote that to the Industrial Commission or Mr. Nelson, rather, of the Commission, on or about the date it bears; it bears my signature. * * *

171-172 (Appl. Exs. A, B, and C received subject to objection.)

172-173 Appl. Ex. A, copied into the transcript of testimony, is a carbon copy of a letter from Harry A. Nelson, director of workmen's compensation, to Continental Casualty Company, dated October 11, 1943.

173-174 Appl. Ex. B, copied into the transcript of testimony is an original letter from John H. Page, attorney, to the industrial commission, dated November 3, 1943.

174-175 Appl. Ex. C, copied into the transcript of testimony, an original letter from Leo T. Kopp to Mr. Harry Nelson, director of workmen's compensation, dated January 9, 1944.

(The original exhibits are on record pages 213 to 217, inclusive, and are printed on pages 168-172, this appendix.)

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175 BY THE EXAMINER:

At present Mr. McCartin resides on North Main. I don't know the number. It is North Main, Rockford, Illinois.

176 * * *

RECROSS-EXAMINATION BY MR. HART:

Q I noticed, Mr. Kopp, that this letter addressed to Continental Casualty Company, under date of October eleventh, refers to the fact that you had consulted them. Do you remember whether you consulted the Commission just shortly before October eleventh or when it was?

A I either consulted them by letter, or I think—I don't remember that clearly.

I either consulted them by letter, or I talked with Mr. Nelson personally. Come to think of it, I talked to Mr. Nelson. That was the event I think that led up to the letter. I am quite sure this conversation I had with Mr. Nelson was just shortly before that letter of October 11, 1943, was written. I don't recall that it was probably within a few days before that. My application for adjustment of claim in Illinois is dated July 19, 1943, and this copy is stamped received by the Industrial Commission of Illinois on July 20, 1943. That is

177 the date I signed it and the date they received it.

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BY THE EXAMINER:

It was my understanding that in case the Commission in Wisconsin should make an award credit would be given for compensation paid to me under the Illinois Act. That is the reason I proceeded in Illinois. I am willing to have Illinois get credit for what they gave me, providing I get an award in Wisconsin.

BY MR. HART:

It is a fact, that at the time I was hired for this job at Beloit, Mr. McCartin was a resident of Rockford, Illinois, and had been for a good many years before that, and in fact has been ever since then.

179-180 RESP. EX. 1—APPLICATION FOR ADJUSTMENT OF CLAIM (ILLINOIS) (only pertinent portions are printed)

179 Form 10 Non-Fatal Cases 34194-50M-11,42 24

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STATE OF ILLINOIS

Dwight H. Green, Governor

INDUSTRIAL COMMISSION
205 W. Wacker Drive, Chicago, Ill.

FILED
Jul 20 1943
The Industrial Commission of Illinois
George R. Murphy, Secretary

# APPLICATION FOR ADJUSTMENT OF CLAIM

## NOTICE OF DISPUTED CLAIM AND MEMORANDUM OF NAMES AND ADDRESSES

(This form to be filed in triplicate)

Leo Thomas Kopp
Petitioner.

vs.

No. 327810

E. E. McCartin
Respondent.

The petition of the undersigned respectfully shows to this Honorable Commission the following, to-wit:

1. That on the 5th day of May, 1943, Leo Thomas Kopp was injured by reason of
(Name of person injured)
an accident arising out of and in the course of his employment by the above named E. E. McCartin; that your petitioner is
(Name of employer)
the person injured.

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2. That a dispute has arisen with respect to the compensation to be paid for the disability resulting from such injury, and the general nature of the dispute is: Whether Illinois or Wisconsin has jurisdiction in my case.

(a) The employer denies liability for the compensation provided for in the Workmen's Compensation Act.

(b) A dispute exists concerning the amount and duration of the compensation payable.

* * *

180. 7. Your petitioner prays that the Industrial Commission appoint an arbitrator to make such inquiries and investigations as he shall deem necessary, and that a day be appointed by said Industrial Commission and the time and place thereof fixed, where said arbitrator may hear such proper evidence as the parties hereto may submit, and that an award and decision may be made, in conformity with the statute in such case made and provided.

The undersigned requests that all notices of proceedings in the above entitled matter be served personally, or by registered mail upon the party whose name and address follows as attorney for

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petitioner; if no attorney's name appears, then to the name and address of the undersigned.

Dated this 19th day of July, 1943.

(Signed) Leo Thomas Kopp

Address R. R. #1 Martin Ave

Attorney for Petitioner. City Rockford, Ill.

Address

City

Telephone

181-182 RESP. EX. 2—SETTLEMENT CONTRACT (only pertinent portions are printed)

181

INDUSTRIAL COMMISSION
State of Illinois
205 West Wacker Drive
Chicago, Ill.

STATE OF ILLINOIS )
) SS.
County of Winnebago )

SETTLEMENT CONTRACT

LEO THOMAS KOPP )
Applicant, )
vs. ) No.
E. E. McCARTIN )
Respondent. )

We, the undersigned, respectfully represent to the Honorable Industrial Commission:

First, that on the 5th day of May, 1943, Leo Thomas Kopp of Martin

(Name of person injured)

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Ave., R.R. #1, Rockford, Ill. was injured
(Address of person injured) (Killed or injured)
in an accident that arose out of and while in the employment of E. E. McCartin of
(Name of employer)
973 North Main St., Rockford, Ill.
(Address of employer)

Second, that the following statement of particulars is not binding upon the parties, if the settlement is not approved:

* * *

182 Terms of settlement Respondent offers and applicant accepts the sum of Two Thousand One Hundred Twelve ($2,112.00) Dollars, representing $17.60 per week for 120 weeks, in full and final settlement of any and all claims of every nature and kind that applicant now has or may hereafter have on account of and arising out of said accident and injury, and by virtue of the provisions of the Workmen's Compensation Act of the State of Illinois. This settlement does not effect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin.

Award of arbitrator or commission has been made as follows: None.

Reasons and causes forming basis of adjustment thereof Applicant and respondent have entered into the above settlement agreement for the purpose of avoiding the expense and delay

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which would result from litigation of the issues under the provisions of the Workmen's Compensation Act of the State of Illinois.

In consideration of the payment of the sum of $2112.00 to Leo Thomas Kopp in weekly installments in the sum of $17.60 for a period of 120 weeks commencing the 24th day of May, 1943 by E. E. McCartin, the employer, the parties hereto have agreed and do hereby agree to waive any and all provisions of the Workmen's Compensation Act, including the right of arbitration, and to settle and adjust said claim of said Leo Thomas Kopp against said E. E. McCartin, the employer, and all differences arising out of and in said cause under the terms of the Workmen's Compensation Act of Illinois and we hereby mutually join in requesting your honorable body that the foregoing waiver of the provisions of the Workmen's Compensation Act and the foregoing contract for settlement be approved and confirmed and the parties hereto be discharged from further liability upon filing proper receipts; provided, however, that this agreement may be reviewed by the Industrial Commission upon petition of either party hereto as provided by paragraph (h) of section 19 of the Workmen's Compensation Act.

Dated this 3rd day of November A. D., 1943.

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[Signed]
Leo Thomas Kopp
Applicant

Attorney for Applicant.

Martin Ave., R.R.#1,
Rockford, Illinois
Address Telephone

Address Telephone

JOHN H. PAGE
Attorney for Respondent

E. E. MC CARTIN
Respondent

615 Rockford
Trust Bldg.
Rockford, Illinois
Address Telephone

BY: [Signed]
John H. Page
As his Attorney.

Address Telephone

973 North Main Street,
Rockford, Illinois

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183-184 RESP. EX. 3—PETITION FOR LUMP SUM (only pertinent portions are printed)

183 Form 28 (File original only. No duplicates required.) (84095-50M-6-39) 2

State of Illinois

Henry Horner, Governor

BEFORE THE INDUSTRIAL COMMISSION OF ILLINOIS

205 W. Wacker Drive, Chicago, Ill.

PETITION FOR LUMP SUM

LEO THOMAS KOPP )
Petitioner, )
vs. ) No. —
)
E. E. MC CARTIN )
Respondent. )

Now comes the petitioner herein and prays that a lump sum order may be entered in the above entitled cause:

Name LEO THOMAS KOPP
(of Injured Party)

* * *

184 Petitioner further shows that he believes it is to the best interests of the parties that compensation now due and to become due be paid in a lump sum, for the following reasons: (Set them out showing necessity for such payment, and proper anticipated use of the money, etc.)

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Petitioner, because of the loss of sight of the eye, is unable to continue his trade as a mason and desires to go into farming as a business. He needs the lump sum settlement to acquire a small farm and equip the same.

Petitioner therefore respectfully prays that proper notices may be given to the interested parties and that a hearing may be had at some day to be fixed by your Honorable Commission, and that upon such hearing said Commission may order the commutation of the compensation to an equivalent lump sum equal to the total sum of the probable future payments capitalized at their present value upon a three per cent basis with annual rests in accordance with the provisions of the Workmen's Compensation Act.

And your petitioner will ever pray.

[Signed] Leo Thomas Kopp
Petitioner.

Martin Avenue, R.R. #1, Rockford, Illinois.
Address.

Attorney for Petitioner.
Address.

I, (or we) hereby indicate our willingness to pay the compensation hereinbefore mentioned, commuted in accordance with Section 9, of the Work-

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men's Compensation Act, if so ordered by the Industrial Commission of Illinois.

CONTINENTAL CASUALTY COMPANY

Signed BY: John H. Page
(Employer or Insurance Co.)
Its Attorney.

Post Office Address 910 South Michigan Avenue
Chicago 5, Illinois
(Give street and number as well as city or town.)

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185 RESP. EX. 4—RECEIPT ON ACCOUNT OF PARTIAL COMPENSATION.

Form 13 40

CONTINENTAL CASUALTY COMPANY
Chicago, Illinois
INDUSTRIAL COMMISSION
State of Illinois
205 W. Wacker Drive
Chicago, Illinois

RECEIPT ON ACCOUNT OF PARTIAL COMPENSATION

I, Leo Thomas Kopp have received of
(Name of Employee or Beneficiary)
E. E. McCartin
(Name of Employer)
the sum of Twenty Seven dollars
and sixty six cents, being the compensation due from the
sixth day of May 19 43 to the 24th day of
May 19 43

| | | |
|---|---|---|
| Paid For | temporary total disability | [X] |
| | (specific loss | [ ] |
| | (other partial permanent disability | [ ] |
| | (disfigurement | [ ] |
| | (temporary partial disability | [ ] |
| | total permanent disability | [ ] |
| | death | [ ] |

Amount paid to date, including this payment, $ 27.66
Amount remaining due $

(Indicate by check x purpose of payment)

under provisions of the Illinois Workmen's Compensation Act, subject to review by the Industrial Commission, for accidental injuries sustained by Leo Thomas Kopp
(Name of Employee)
on the 5th day of May 19 43 while in the employ of
E. E. McCartin — Rockford, Illinois
(Name of Employer) — (City or Town)
973 North Main St.
(Street and Number)
$ 27.66 [signed] Leo Thomas Kopp
(Name of Employee or Beneficiary)
Date December 7, 19 43 R. R. #1, Rockford, Illinois
(City, Street and Number)

Form M2011

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186 RESP. EX. 5—FINAL REPORT AND SETTLEMENT RECEIPT

STATE OF ILLINOIS—INDUSTRIAL COMMISSION
300 W. Adams St., Chicago, Ill.

FINAL REPORT AND SETTLEMENT RECEIPT
CONTINENTAL CASUALTY COMPANY
Chicago, Illinois File No.

Employer and Employee

Employer's name E. E. McCARTIN Date Dec. 7, 19 43

Office address: Street and No. 973 North Main Street, City Rockford, Ill.

Name of Injured. LEO THOMAS KOPP

Address: Street and No. R. R. #1, Martin Ave. City Rockford, Ill.

Date of injury May 5, 1943

Last day employee worked May 5, 1943

Average weekly wages $ 64.00

Percentage of weekly wages maximum

Rate of compensation, per week $ 17.60

Days worked between date of injury and date employee returned to work none

Last day of disability May 23, 1943

Last day on which employee was disabled, not day on which employee did or could return to work.)

Period of disability from date of accident: two weeks four days.

| BASIS OF SETTLEMENT | Amount Paid | |
|---|---|---|
| 1 4/7 Weeks for temporary total disability | $27 | 66 |
| Weeks for specific loss of (Arm, foot, 1st phalange of 2nd finger, etc.) | | |
| 120 Weeks for 100% loss of use of left eye | $2112 | 00 |
| Weeks for disfigurement to (Head, face or hands) | | |
| Weeks for permanent partial disability | | |
| Weeks for permanent total disability | | |
| Weeks for death | | |
| Weeks for temporary partial disability | | |
| TOTAL | $2139 | 66 |
| Hospital and Medical Services | 216 | 05 |
| Funeral Expenses | | |

ARBITRATION PROCEEDINGS

Was there an arbitration? Commission number Was there a review?

Was there a settlement contract? Yes Commission number 327810

Was there a lump sum settlement? Yes Commission number 327810

Gross amt. of lump sum? $ 2112.00 Commutation deducted? $ none Net $ 2112.00

Page of Record

## FINAL RECEIPT

I, Leo Thomas Kopp
(Name of employee, personal representative or beneficiary)
Have received of E. E. McCARTIN
(Name of employer)
the sum of ($2,112.00) Two Thousand One Hundred Twelve dollars and no cents
making in all, with the weekly payments already received by me, the Total Sum
of ($2,139.66) Two Thousand One Hundred Thirty Nine dollars and sixty six cents
cents ($2,139.66) in full settlement of compensation under the provisions
of the Illinois Workmen's Compensation Act, for injuries received by
Leo Thomas Kopp on or about the 5th day of May 19 43
(Name of employee)
while in the employ of E. E. McCartin, 973 North Main St., Rockford, Illinois
(Name of employer, city or town, street and number)
subject to review by the INDUSTRIAL COMMISSION.
Witness my hand this 7th day of December 19 43

[signed] Leo Thomas Kopp
(Signature of employee, personal representative or beneficiary)

Witness: [signed] John H. Page Address R. R. #1, Rockford, Illinois
(Street and number, city or town)

Form 85 (This form should be used only when payments have been completed. Every question which applies must be answered or the report cannot be accepted for filing by the Industrial Commission.)

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187-194 RESP. EX. 6—APPLICATION FOR ADJUSTMENT OF CLAIM (ILLINOIS), PETITION FOR LUMP SUM, SETTLEMENT CONTRACT, LUMP SUM SETTLEMENT ORDER, AND CERTIFICATE OF SECRETARY OF INDUSTRIAL COMMISSION OF STATE OF ILLINOIS. (Application for adjustment of claim (Illinois), settlement contract, and petition for lump sum are duplicates of Resp. Exs. 1, 2, and 3 respectively, which exhibits are printed on pages 148-157, this appendix. The lump sum settlement order is printed below.)

193 Form 30 (7007-30M-10-41) 240

INDUSTRIAL COMMISSION OF ILLINOIS
205 West Wacker Drive
Chicago, Ill.

## Lump Sum Settlement Order

Leo Thomas Kopp )
Petitioner, )
)
VS. ) No. 327810
)
E. E. McCartin )
Respondent. )

To Petitioner, Leo Thomas Kopp, Martin Avenue, R. R. # 1 Rockford, Ill.

To Respondent, thru—John H. Page, 615 Rockford Trust Bldg., Rockford, Ill.

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Petition for a lump sum settlement under the provisions of Section 9 of the Workmen's Compensation Act having been filed herein on the 29th day of November ,19 43, and said matter now coming on to be heard, upon proper notice to the interested parties, and a proper showing having been made, it appears to the Commission to be to the best interest of the parties that compensation herein be paid in a lump sum.

IT IS THEREFORE ORDERED BY THE COMMISSION that the compensation herein be paid in a lump sum of Two Thousand One Hundred Twelve & No 100 Dollars ($2112.00 ), as prayed in said petition, in accordance with the provisions of said Section 9 of the Workmen's Compensation Act.

Dated at Chicago, Illinois, this 10th day of January , 19 44.

(S E A L)

Wm. John Granata
Elmer Schofield
John Moulin

INDUSTRIAL COMMISSION OF ILLINOIS

ATTEST:

[signed] George R. Murphy
Secretary.

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196 RESP. EX. 7—PAMPHLET ENTITLED "LAWS RELATING TO LABOR AND EMPLOYMENT," STATE OF ILLINOIS (not printed)

196 RESP. EX. 8—CERTIFIED PHOTOSTATIC COPIES OF SECS. 3, 4, 5, 6, 8, 9, 10, 11, 13, 14, AND 19 OF ILLINOIS COMPENSATION ACT (not printed)

197-209 RESP. EX. 9—CERTIFIED COPY OF STENOGRAPHIC REPORT OF PROCEEDINGS HAD ON SETTLEMENT CONTRACT AND LUMP SUM PETITION (only pertinent portions are printed)

197 I, A. J. FLYNN, Do Hereby Certify, that I am one of the Official Court Reporters employed by the INDUSTRIAL COMMISSION OF ILLINOIS, that I took down in shorthand the proceedings had in the matter of Leo Thomas Kopp vs. E. E. McCartin, Industrial Commission Case No. 327 310, and that the foregoing is a true and correct transcript of my notes taken in said matter.

[signed] A. J. Flynn
Official Court Reporter
Industrial Commission of Illinois.
205 West Wacker Drive, Chicago, Ill.

Dated December 3, 1943, at Chicago, Illinois.

* * *

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206 LEO T. KOPP, the Petitioner herein, having been first duly sworn was examined and testified as follows:

* * *

THE COMMISSIONER: State your name, please.

THE WITNESS: Leo Thomas Kopp.

BY MR. KANE:

Q Where do you live? A Martin Avenue, Route 2, Rockford, Illinois.

Q Do you live in a rented home or your own home?

A My own.

Q How long have you lived in Rockford?

A I have lived in Rockford for eighteen years.

Q You never left Rockford so far as abandoning Rockford as your home, as your town, for the last eighteen years it has been your home?

A With the exception of seven months I was out of town.

Q Do you know Mr. McCartin? A Yes, sir.

Q How long have you known Mr. McCartin?

A I have known him and worked for him seven years.

Q The first time you started to work for him where did he hire you?

201 A Rockford, Illinois.

Q Did he any time hire you any other place outside of Rockford?

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A No, sir.

Q Wherever you did any work you were hired in Rockford?

A Yes, sir.

Q Did you work for him outside of Rockford?

A Yes, sir.

Q All the hiring was done in Rockford?

A Yes, sir.

* * *

Q Will you tell the Commissioner what happened to you on the 5th day of May, 1943.

A I was repairing some work we done.

Q Where at? A At Beloit, Wisconsin. * * *

* * *

Q And the work you did in Beloit, your were also
202 hired in Rockford to do that job?

A Yes, sir.

* * *

204 Q You had your understanding with the employer what you were going to get from the insurance company?

A Yes, sir.

206 THE COMMISSIONER: The reason I am asking
207 you is this I have before me a Settlement Contract and a Lump Sum Petition and ordinarily in these kind of cases we do not like to close them out. I want you to completely understand this.

A I have had quite a bit of time to think it over.

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THE COMMISSIONER: I want you to completely understand what your rights are so that we can have the record clear, so we can feel safe in taking this action knowing that you understand it. That is my duty.

A Here is my position now, even the work I am doing now I have to go out and get a job that is common work and it does not pay me half what I worked for before. My scale was $1.60, I work for 74 cents now. I find that is kind of dangerous for me.

* * *

A The reason I want a lump sum settlement because finding it so difficult to do so much work, I have a little property in addition to this, I could
208 sell that and buy a little acreage.

THE COMMISSIONER: You are intelligent. I will approve the Lump Sum Settlement Petition if you want it but I just want you to understand it is a full settlement and it is final, you cannot make claim—

A I have thought that over—

Q In the future as against E. E. McCartin under the provisions of the Compensation Act for the injuries you sustained on May 5, 1943, for that injury to the left eye. In other words this completely closes out your case so far as any medical, surgical or hospital expense, or as far as any additional compensation is concerned, you understand that?

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A Well, does that—I do not know whether you know this. When this injury happened to me it was reported in Wisconsin.

THE COMMISSIONER: If you are concerned about the Workmens Compensation Act in Wisconsin they have a provision in there this Settlement does not affect any rights the Applicant may have under the Compensation Act of the State of Wisconsin. I do not know what it might mean, what your rights are in the State of Wisconsin—I do not know whether the Wisconsin Act pro-
209 vides for any increase where it has been already closed out in another state, I do not know but that provision is in there. What it is worth I am in no position to advise you. I sit only as a member of the Industrial Commission of the State of Illinois. I do not know what the Wisconsin Act is. I do not know what rights you have under the Wisconsin Act, if any. I can't say you will be protected there, I do not know.

Do you understand this thoroughly. Is there anything you do not understand you think I could advise you on?

A I have been through this matter for the last six months. I have thought it over thoroughly. I would very much appreciate it if you would give me a lump sum. I will take chances on Wisconsin.

THE COMMISSIONER: I will allow you a lump sum since you understand it and you know what you are doing.

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A I do.

Q Ordinarily we don't.

A I think I do anyhow. I have thought it over everyway.

* * *

211-212 RESP. EX. 10—POINTS AND AUTHORITIES (list of Illinois cases) (not printed)

213 APPL. EX. A—CARBON COPY OF LETTER FROM HARRY A. NELSON, DIRECTOR OF WORKMEN'S COMPENSATION, TO CONTINENTAL CASUALTY COMPANY, DATED OCTOBER 11, 1943 (omitting formal parts)

Mr. Kopp has consulted us concerning possible settlement of his claim because of injury on May 5, 1943, at Beloit. He states that injury has resulted in total loss of vision of one eye. He also informs us that no compensation has been paid. There appears to be question as to whether his claim is compensable under the Illinois or Wisconsin law, or both laws. We have informed him that under supreme court holdings in Wisconsin he is entitled to proceed under the Illinois act and thereafter claim compensation under the Wisconsin act with credit to be given for the amount paid to him under the provisions of the Illinois act, regardless of whether or not he may later make claim under the Wisconsin act. It does not seem to us that Mr. Kopp should be prejudiced by having to wait for some period of time while the question of jurisdiction is being considered, although it seems clear that as a minimum com-

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pensation benefits will accrue in the amount which the Illinois act provides.

Please let us hear from you.

We are sending copy of this letter to Mr. Kopp for his information.

214-215 APPL. EX. B—ORIGINAL LETTER FROM JOHN H. PAGE, ATTORNEY, TO THE INDUSTRIAL COMMISSION, DATED NOVEMBER 3, 1943 (omitting formal parts)

214 Your letter of October 11, 1943 to the Milwaukee office of Continental Casualty Company has been referred to me for reply by the Home Office of the company.

As you state in your letter, there appears to be a question as to whether Kopp's claim is compensable under the Illinois or Wisconsin law or both laws. It has been our thought that since McCartin and Kopp are and have been residents of Rockford, Illinois for many years and the contract of employment was entered into at Rockford, Illinois, the Illinois Workmen's Compensation Act governs the right to and the amount of compensation payable to Kopp. With Kopp a resident of Illinois, voting here, subject to the Unemployment Compensation Laws of this state, the interest of Illinois in Kopp's welfare, in whether he may become a pauper and a charge upon the community is far superior to any interest Wisconsin might have in him. Further, the Supreme Court of Il-

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linois has consistently held that where the employee and the employer are non-residents and the contract of employment is entered into in the state of residence of the employer and employee, the Workmen's Compensation Act of that state controls and not the Illinois Workmen's Compensation Act even though the accident and injury occured in Illinois.

We have been desirous of effecting a compromise rather than engage in drawn out litigation of a question involving a conflict of laws. Since you do not feel that you are able to approve a compromise, that is out of the question.

215 There has been some question in our minds as to what procedure to follow under the Illinois Workmen's Compensation Act, not wishing to pay one award under the Illinois Act and another under the Wisconsin Act for the same injury. We note your advices in your letter of October 11, 1943 that under the Supreme Court holdings in Wisconsin, Kopp is entitled to proceed under the Illinois Act and thereafter claim compensation under the Wisconsin Act with credit to be given for the amount paid him under the provisions of the Illinois Act. We under stand from your advices that if we make payments to Kopp under the Illinois Workmen's Compensation Act, for the loss of his left eye, you, in the event you make an award to Kopp under the Wisconsin Act for the same injury, will credit your award with the

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amount paid to Kopp under the provisions of the Illinois Act. With this understanding, we are proceeding to pay Kopp compensation under the provisions of the Illinois Act.

216-217 APPL. EX. C—ORIGINAL LETTER FROM LEO T. KOPP TO MR. HARRY NELSON, DIRECTOR WORKMEN'S COMPENSATION, DATED JANUARY 9, 1944 (omitting formal parts)

216 The notice of cancellation of hearing scheduled for January 13th 1944, leaves me somewhat confused. Refering to your letter of October 11 - 43 to Continental Casualty Co., of which I have a copy you advised that under Supreme Court holdings in Wisconsin I would be entitled to proceed under Illinois Act, and thereafter claim compensation under Wisconsin Act, with credit given for amount paid me under Illinois Act.

Procedure was started in Illinois and on Novem-
217 ber 29 - 1943 the Illinois Industrial Commission awarded me $2,112, representing $17.60 per week for 120 weeks in a lump sum award plus 18 days temporary disability. However in the Contract under terms of settlement this claus was added at my request. "This settlement does not effect any rights that applicant may have under the Workmans Compensation act of the State of Wisconsin."

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Kindly advise me if the settlement under Illinois act will have any effect on my rights to claim under Wisconsin act."

238-239 JUDGMENT (omitting formal parts)

238 The above entitled matter having come on for hearing, before the court without a jury, upon the return of the above named defendant, Industrial Commission of Wisconsin, Wilkie, Toebaas, Hart & Jackman by Mr. Lawrence E. Hart appearing on behalf of plaintiffs and Mortimer Levitan, Assistant Attorney General, appearing on behalf of defendants, Industrial Commission of Wisconsin and State of Wisconsin, and there being no other appearances, and the court having heard the arguments of counsel and being fully advised in the premises, and having taken the matter under advisement and having on the 7th day of November, 1945, filed its decision and directions for the entry of a judgment as hereinafter provided,

NOW THEREFORE, on motion of Wilkie, Toebaas, Hart & Jackman attorneys for plaintiffs,

IT IS ADJUDGED that defendant, Industrial Commission of Wisconsin, acted without and in excess of its powers in making and entering its order and award dated May 15, 1944, ordering E. E. McCartin, and his insurer, Continental Casualty Company, to pay a total of One Thousand One Hundred Ninety-four Dollars to Leo Thomas Kopp

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because of injuries received by him on May 5,
239 1943, while in the employ of E. E. McCartin, and that said order and award be, and the same hereby is, set aside.

Dated at Madison, Wisconsin, this 20th day of November, 1945.

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[fol. 178] I, Arthur A. McLeod, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the attached printed Appendix *of the appellants, is a full and* complete copy of the printed Appendix in No. 149, August Term, 1945, in the Wisconsin Supreme Court, argued on March 15th, 1946, and of the whole thereof; and together with the balance of the record herewith certified constitutes an entire and true copy of the entire record before the Supreme Court of Wisconsin, in said cause, and of the proceedings in said cause, in this Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Madison, this 24th day of June, A. D. 1946.

Arthur A. McLeod, Clerk of Supreme Court, Wisconsin. (Seal.)

[fol. 179] Pleas before the Supreme Court of the State of Wisconsin at a term thereof begun and held at the Capitol in Madison, the seat of government of said State on the Second Tuesday, to-wit: the Fourteenth day of August, A. D. 1945.

Present: Hon. Marvin B. Rosenberry, Chief Justice; Hon. Chester A. Fowler, Hon. Oscar M. Fritz, Hon. Edward T. Fairchild, Hon. John D. Wickhem, Hon. Joseph Martin, Hon. Elmer E. Barlow, Justices.

Arthur A. McLeod, Clerk.

Be it remembered that heretofore, to-wit: on the twentieth day of December in the year of our Lord One Thousand Nine Hundred and Forty-five came into the office of the Clerk of the Supreme Court of the State of Wisconsin, the Industrial Commission of Wisconsin, Leo Thomas Kopp and State of Wisconsin, by their attorneys and filed in said Court their certain Notice of Appeal, according to the statute in such case made and provided, and also the Return to such appeal, of the Clerk of the Circuit Court of Dane County, in said State, in words and figures following, that is to say:

[fol. 180] IN THE CIRCUIT COURT OF THE STATE OF WISCONSIN FOR DANE COUNTY

Circuit Court, Dane County, Wisconsin. Dec. 1, 11.57 A. M. 1945. Myrtle L. Hansen, Clerk.

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation, Plaintiffs,

v.

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, and STATE OF WISCONSIN, Defendants

NOTICE OF APPEAL

To ~~Wilkie, Tuebaas~~, Hart and Jackman, Attorneys for Plaintiffs; Myrtle L. Hansen, Clerk of Circuit Court for Dane County:

Please take notice that the undersigned, the defendants in the above entitled action, by John E. Martin, Attorney General, and Mortimer Levitan, Assistant Attorney General, and Leo Thomas Kopp, in propria persona, appeal to the Supreme Court of the State of Wisconsin, from a certain judgment entered in the above entitled action on the 20th day of November, 1945, setting aside an interlocutory award of the Industrial Commission of Wisconsin, dated May 15, 1944, ordering the plaintiffs to pay certain sums as compensation to Leo Thomas Kopp because of injuries sustained while in the employ of the plaintiff, E. E. McCartin, and reserving the questions of liability for glasses, of further treatment and of determination of further temporary, and of the exact extent of permanent, disability, and payment to the state fund, and from the whole and every part thereof.

Dated at Madison, Wisconsin, this 1st day of December, 1945.

Industrial Commission of Wisconsin, State of Wisconsin. By John E. Martin, Attorney General; Mortimer Levitan, Assistant Attorney General.

Filed Dec. 20, 1945. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.

Leo Thomas Kopp, in propria persona.

[fol. 181] [Endorsed:] (Original). State of Wisconsin, Circuit Court, Dane County. E. E. McCartin, et al., Plaintiffs, v. Industrial Commission of Wisconsin, et al., De-

fendants. Notice of Appeal. Due and personal service of the within Notice of Appeal admitted this 1st day of December, 1945. Wilkie, Toebaas, Hart & Jackman, Attorney for plaintiffs, —— —— Attorney for —— ——. Service admitted this 1st day of December, 1945. Myrtle L. Hansen, Clerk. Circuit Court, Dane County, Wisconsin. Dec. 1, 11.57 A. M. 1945. Myrtle L. Hansen, Clerk. Filed Dec. 20, 1945. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.

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[fol. 182] And afterwards to-wit on the 15th day of March, A. D. 1946, the same being the 40th day of said term, the following proceedings were had in said cause in this Court:

DANE CIRCUIT COURT

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation, Respondents,

v.

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, and STATE OF WISCONSIN, Appellants

And now at this day, came the parties herein, by their attorneys, and this cause having been argued by Mortimer Levitan, Esq., Assistant Attorney General, for the said appellants, and by Laurence E. Hart, Esq., for the said respondents, and submitted, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

[fol. 183] And afterwards, to-wit: on the 12th day of April, A. D. 1946, the same being the 44th day of said term, the judgment of this Court was rendered in words and figures follgwing, that is to say:

DANE CIRCUIT COURT

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation, Respondents,

v.

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, and STATE OF WISCONSIN, Appellants

Opinion by Justice Barlow.

This cause came on to be heard on appeal from the judgment of the Circuit Court of Dane County and was argued

by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the Circuit Court of Dane County, in this cause, be, and the same is hereby, affirmed.

Justice Fritz dissents.

[fol. 184] Thereupon the opinion of the Court by Justice Barlow was filed in words and figures following, that is to say:

[fol. 185] IN THE SUPREME COURT OF THE STATE OF WISCONSIN, AUGUST TERM, 1945

No. 149

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation, Respondents,

v.

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, and STATE OF WISCONSIN, Appellants

Appeal from a judgment of the Circuit Court for Dane county; Herman W. Sachtjen, Circuit Judge. Affirmed.

This is an appeal from a judgment of the Circuit Court for Dane county entered November 7, 1945, setting aside an interlocutory award of the Industrial Commission dated May 15, 1944, ordering the respondents, E. E. McCartin and Continental Casualty Company, a corporation, to pay certain sums as compensation to the appellant, Leo Thomas Kopp, because of injuries sustained by him while in the employ of respondent E. E. McCartin. The material facts will be stated in the opinion.

[fol. 186] BARLOW, J.:

This is a workman's compensation case. Leo Thomas Kopp, a resident of Illinois, was an employee of E. E. McCartin, an Illinois resident. Pursuant to a contract made in Illinois, Kopp agreed to work as a bricklayer on a building job in Beloit, Wisconsin, the job lasting about ten months, during which time Kopp drove back and forth between his home in Rockford, Illinois, and the building job in Beloit, Wisconsin. On May 5, 1943, while so employed on the Beloit job, Kopp suffered an injury to his

left eye, resulting in a traumatic cataract. Both employer and employee were subject to the Wisconsin compensation act. On June 7, 1943, Kopp filed an application for adjustment of claim with the Industrial Commission of Wisconsin, and on July 20, 1943, filed application for adjustment with the Industrial Commission of Illinois. On November 29, 1943, a settlement contract, dated November 3, 1943, was filed with the Illinois commission, and on November 29, 1943, Kopp filed with the Illinois commission a petition for lump sum payment. On December 3, 1943, the Illinois commission held a hearing on the application for lump settlement, and on that day endorsed its approval of the petition. December 7, 1943, full payment was made of compensation due under the Illinois compensation act, and on January 10, 1944, the Illinois commission issued a lump sum settlement order. The Wisconsin commission held a hearing February 24, 1944, at which time the contention was made that Wisconsin had no jurisdiction. April 18, 1944, after hearing, the examiner entered an interlocutory award holding that Wisconsin had jurisdiction, and ordering the payment of certain benefits but giving credit for the sums paid under the Illinois law, and making reservations not material here. The award of the examiner was [fol. 187] affirmed by the Industrial Commission of Wisconsin May 15, 1944, which order and award were set aside by the circuit court.

It is undisputed that both the Industrial Commission of Illinois and the Industrial Commission of Wisconsin had jurisdiction to award compensation at the time of the injury. It appears that the law of this state provides for a larger compensation than does the law of Illinois for an injury such as Kopp received.

This court held in *Interstate Power Co. v. Industrial Commission* (1931), 203 Wis. 466, 234 N. W. 889; *Salvation Army v. Industrial Commission* (1935) 219 Wis. 343, 263 N. W. 349, and *Wisconsin Bridge and Iron Co. v. Industrial Commission* (1936), 222 Wis. 194, 268 N. W. 134, that an award for compensation in another state would not preclude recovery of an award in Wisconsin; however, the amount of the award in the other state must be credited upon the Wisconsin award.

In one of these cases, *Salvation Army v. Industrial Commission*, the employer was an Illinois corporation and the employee an Illinois resident who sustained a fatal

injury in Wisconsin. The procedure approved in that case is the one that was followed here, and there would be no question about it being proper if it were not for the case of *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, decided December 20, 1943, by the Supreme Court of the United States. There the employee Hunt was employed in Louisiana by the Petroleum company in connection with the drilling of an oil well, and was sent by his employer from Louisiana to Texas, and while working there sustained an injury. Application for award was made in Texas under the workmen's compensation law of that state, and the Texas insurer began to make payments. Hunt then re- [fol. 188] turned to his home in Louisiana and notified the insurer of his intention to claim under the statute of Louisiana. Four days later, without any request from Hunt, the Texas board notified him that a hearing would be held in Texas within two and a half weeks "to determine the liability of the insurance company under the Texas Law." Hunt did not participate in that proceeding. The Texas board made an award but, before this became final, Hunt declined to accept money under it and filed suit in Louisiana under the workmen's compensation law of Louisiana. He recovered judgment for a larger amount than the Texas award, from which the Louisiana court deducted the sum he had already received from the Texas insurer. On appeal, the Supreme Court of the United States held that the full faith and credit clause, Art. IV, sec. 1, Constitution of the United States, applied to findings and awards by commissions as well as judgments and decrees of courts, and that "The Texas award, being a bar to any further recovery of compensation for respondent's injury is, by virtue of the full faith and credit clause, exclusive of his remedy under the Louisiana Act." The court then went on to say:

> "The grounds of recovery are the same in one state as in the other—the injury to the employee in the course of his employment. The whole tendency of our decisions under the full faith and credit clause is to require the plaintiff to try his whole cause of action and his whole case at one time. He cannot split up his claim and '*a fortiori*, he cannot divide the grounds of his recovery.'"

The court further stated:

"Respondent was free to pursue his remedy in either state but, having chosen to seek it in Texas, where the award was res judicata, the full faith and credit clause precludes him from again seeking a remedy in Louisiana upon the same grounds."

It is argued by appellants that the following language in [fol. 189] the settlement contract filed with the Industrial Commission of Illinois, "This settlement does not effect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin" constituted a reservation of employee's rights to additional benefits under the Wisconsin Compensation Act and that the employer should be estopped from questioning the right of the employee to proceed in Wisconsin. To sustain his contention considerable weight is given to a letter written by the Industrial Commission of Wisconsin to respondent insurance carrier on October 11, 1943, in which the commission informed respondent insurance carrier that the commission had informed claimant Knopp he could proceed under the Illinois act and thereafter claim compensation under the Wisconsin act, with credit to be given for the amount paid to him under the provisions of the Illinois act. The insurance carrier, through its attorney, replied under date of November 3, 1943, that it understood that if it (the insurance carrier) made payments to claimant under the Illinois Workmen's Compensation Act for this injury, credit would be given for these payments *in the event an award was made to Kopp under the Wisconsin Act*. There is nothing in the letters or the provision of the settlement contract filed with the Illinois commission by which the insurance carrier waived any legal rights it had or granted any additional rights to claimant. It merely agreed that, if claimant had any legal rights which he could establish in Wisconsin it was his privilege to do so. Claimant was not deceived in any way by the insurance carrier, as there is no evidence he knew anything about the letters that were exchanged between the Wisconsin commission and the insurance carrier, and on the hearing on the petition for payment of the lump sum, before the Illinois Commission [fol. 190] on December 3, 1943, claimant was informed by the commissioner in charge of the hearing that the settlement petitioned for was a full and final settlement of any

claim against his employer, McCartin, for the injury sustained to his eye on May 5, 1943. Claimant then mentioned that the accident had been reported in Wisconsin. The commissioner informed claimant that he knew nothing about his rights in Wisconsin and could not say that he would be protected there as he did not know, and asked him whether he fully understood this. Claimant then requested that the lump sum settlement be allowed and he would take his chances in Wisconsin. There can be no question that he was fully informed and was not led to believe that any rights were specifically reserved for him under the Wisconsin act.

It is claimed that the *Magnolia* case, supra, should not apply because under the Texas law an election to accept compensation in another state barred recovery in Texas while in the case under consideration there is no law barring recovery in both states. While the court stated in the *Magnolia* case that it was not required to pass on this specific question, due to the Texas law, the case was decided wholly on the effect to be given to the full faith and credit clause of the constitution, and to hold otherwise for the reason here urged would require us to disregard the language and reasoning used in the decision.

The next contention of appellants is that the award by the Industrial Commission of Illinois was an interlocutory award, because it was subject to claimant's rights under the Wisconsin act, and therefore was not final and res judicata, and for this reason this case is not ruled by the *Magnolia* case. We have heretofore pointed out in this [fol. 191] opinion that the lump sum application was approved and an order entered in full and final settlement of any claim by reason of this injury, and that the language used in the settlement contract with reference to claimant's rights under the Wisconsin act did not constitute any condition or agreement affecting the rights of the parties, so it cannot be said that the Illinois award was an interlocutory award, and no claim is made that a final award by the Industrial Commission of Illinois is not res judicata.

Consideration has been given to other questions presented in appellants' brief, but we do not feel any useful purpose will be served in further discussion, as it is considered this case is governed by the case of *Magnolia Petroleum Co. v. Hunt*, supra. State courts must conform to decisions of the United States Supreme Court, as they

are the law on all matters involving a federal question even though they overrule the established law of many state courts. The rule announced in the *Magnolia* case has been followed in the following cases: *Overcash v. Yellow Transit Co.* 352 Mo. 993, 180 S. W. 2d 678; *Butler v. Lee Bros. Trucking Co.* 178 S. W. 2d 58.

*By the Court.*—Judgment affirmed.

[fol. 192] And afterwards, to-wit: on the 17th day of June, A. D. 1946, the following stipulation was filed in this cause:

[fol. 193] It Is Hereby Stipulated Between the Parties, by their respective attorneys:

That in the record before the Supreme Court of the State of Wisconsin in Case No. 149, August Term, 1945, argued on the 15th day of March, 1946, the settlement contract, of which only portions are printed in the printed appendix as Resp. Ex. 2 at pp. 151-154 of said printed appendix, being pp. 181-182 of the original record certified from the lower court, contains thereon the following endorsements:

"Filed November 29, 1943. The Industrial Commission of Illinois. George R. Murphy, Secretary."

"Approved December 3, 1943. Industrial Commission of Illinois. Wm. John Granata, member."

That this stipulation may be filed with the Clerk of the Supreme Court of the State of Wisconsin and included as a part of the record to be certified to the Clerk of the Supreme Court of the United States.

Dated this 14 day of June, 1946.

Wilkie, Toebaas, Hart & Jackman, by Laurence E. Hart, Attorneys for E. E. McCartin and Continental Casualty Company, a Corporation. John E. Martin, Attorney General of the State of Wisconsin, by Mortimer Levitan, Assistant Attorney General of the State of Wisconsin. Attorneys for Industrial Commission of Wisconsin and State of Wisconsin.

[fol. 194] IN THE SUPREME COURT OF THE STATE OF WISCONSIN

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation, Respondents,

v.

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, and STATE OF WISCONSIN, Appellants

I, Arthur A. McLeod, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true and correct transcript of all the record and proceedings now on file and of record in my office with all things concerning the same in the above entitled cause, in this Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Madison, this 21st day of June, A. D. 1946.

Arthur A. McLeod, Clerk of Supreme Court, Wisconsin. (Seal.)

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[fol. 195] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 270

ORDER ALLOWING CERTIORARI—Filed October 14, 1946

The petition herein for a writ of certiorari to the Supreme Court of the State of Wisconsin is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.